

**ORDINANCE NO. 2005-O-51**

AN ORDINANCE OF THE VILLAGE OF VOLENTE, TEXAS, PROVIDING THE REGULATION OF POOLS AND SPAS INCLUDING PUBLIC AND PRIVATE ESTABLISHMENTS; PROVIDING STANDARDS FOR THE DEVELOPMENT AND USE OF POOLS AND SPAS; PROVIDING DEFINITIONS, SEVERABILITY, OPEN MEETINGS AND EFFECTIVE DATE CLAUSES; PROVIDING PENALTIES; AND PROVIDING FOR RELATED MATTERS.

**WHEREAS**, the Village of Volente desires to adopt regulations regarding both public and private pools and spas pursuant to the provisions of the Texas Local Government Code and the Texas Health & Safety Code to promote the public health, safety, and general welfare of the citizens of the Village of Volente;

**WHEREAS**, the provisions of this ordinance are consistent with the provisions of the comprehensive plan for the Village of Volente and are designed to achieve the purposes set forth in the Texas Local Government Code and the Texas Health & Safety Code;

**WHEREAS**, the Village of Volente has complied with the notice and public hearing requirements of the Texas Local Government Code and the Texas Open Meetings Act;

**WHEREAS**, the Village of Volente desires to adopt the following standards for pools and spas;

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL FOR THE VILLAGE OF VOLENTE, TEXAS, THAT:**

**ARTICLE 36.100 POOLS AND SPAS**

**Division 1. General Provisions**

**Sec. 36.101 Applicability**

This article applies within the municipal city limits.

**Section 36.102 City Secretary Designation: Enforcement**

(A) In accordance with the state pool and spa regulations, the city secretary is designated as the:

- (1) Environmental health officer; and
- (2) Local regulatory authority.

(B) The city secretary is authorized to enforce the state pool and spa regulations.

**Sec. 36.103 Statement of Purpose**

Pool and spa regulation and management policies shall govern the planning, design, construction, operation and maintenance of these facilities within the village. This article sets forth the minimum requirements necessary to provide and maintain a safe and effective management system to control the pools and spas within the Village and to establish the various public and private responsibilities for the provision thereof. Further, it is the purpose of this article to:

- (1) protect human life, health and property;
- (2) control and manage the quality of pools and spas by managing their construction and water quality;
- (3) establish a reasonable standard of design and performance for development which conforms to relevant state Health & Safety Code provisions.

**Division 2. Definitions**

For the purpose of this article, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense shall include the future tense, words in the plural number shall include the singular number, and vice versa; and words in the masculine gender shall include the feminine gender, and vice versa. Definitions not expressly prescribed herein are to be determined in accordance with customary usage in municipal planning and engineering practices. The word “shall” is always mandatory, while the word “may”

is merely directory. A term used in this article that is defined in the state pool and spa regulations has the meaning ascribed to it by the state pool and spa regulations.

Private Facility: Means a pool or spa that serves not more than two dwellings.

Public Facility: Means a pool or spa that is governed by the state pool and spa regulations.

State Pool and Spa Regulations: Means the regulations adopted by the state of Texas to regulate public pools and spas, and includes the following, as amended from time to time:

- (a) Health and Safety Code Sections 341.064, 341.081, 341.082, 341.091, and 341.092.
- (b) Health and Safety Code Chapter 757; and
- (c) Texas Administrative Code Title 25, Part 1, Chapter 265, Subchapter L.

### **Division 3. Building Permits**

#### **Section 36.104 Building Permit Required.**

- (A) Except as provided in Subsection (B), a person may not construct or structurally alter a public facility, private facility, or an enclosure for a private facility unless the building official has issued a building permit for the construction or alteration.
- (B) A building permit is not required for a prefabricated wading pool with a capacity of less than 5,000 gallons.

### **Division 4. Private Facilities**

#### **Section 36.105 Enclosure required for private facility.**

- (A) The operator of a private facility located outdoors shall enclose the facility in the manner prescribed by this section.
- (B) The enclosure:
  - (1) must be at least four feet in height;
  - (2) may include a fence, wall, or building
  - (3) may not include an opening large enough to permit the passage of a four inch diameter sphere; and
  - (4) must be constructed in accordance with the Building Criteria Manual.

## **Division 5. Public Facilities**

### **Section 36.106 Compliance with State Pool and Spa Regulations.**

A public facility must be constructed, maintained, and operated in accordance with the state pool and spa regulations.

### **Section 36.107 Construction Plans.**

(A) A person may not construct or structurally alter a public facility unless a building inspector and health authority have approved the construction plans.

(B) A person who seeks to construct or structurally alter a public facility must submit the construction plans to the building inspector and the health authority for review.

(C) The construction plans must include:

(1) the proposed design of the public facility;

(2) a description of the construction materials

(3) the mechanical plans, including a description of the equipment make and model; and

(4) certification by a registered architect or registered engineer that the construction plans comply with the state pool and spa regulations.

(D) The village engineer shall approve the construction plans after determining that the plans comply with the site plan.

(E) The health authority shall approve the construction plans after determining that the construction plans comply with the state pool and spa regulations.

### **Section 36.108 Water Quality Tests and Reports**

(A) The operator of the public facility shall test the water quality and report the results as required by the state pool and spa regulations.

(B) In addition to the requirement of Subsection (A), for Class C or Class D pool the operator shall test the water quality and report the results at least twice each day of operation.

(C) The operator of the public facility shall:

(1) retain the test results and reports on-site for at least three years; and

- (2) provide the test results and reports to the health authority when requested by the health authority.

#### **Section 36.109 Inspections**

- (A) The Village Engineer may inspect the public facility at any reasonable time.
- (B) If access to a public facility is restricted by a locking mechanism, the operator shall provide the Village Engineer with a key, access card, lock combination, or other means to unlock and enter the facility.

#### **Section 36.110 Operating Permit Required.**

- (A) A person may not operate a public facility without an operating permit.
- (B) A person who seeks to operate a public facility must file an application for an operating permit with the city secretary annually. The application must include:
  - (1) the operator's name and address;
  - (2) the location of the facility; and
  - (3) other information as required by the health authority.
- (C) As provided, the city secretary shall issue an operating permit if the public facility complies with the requirements of this article.
- (D) A permit is not transferable.
- (E) The operator shall retain the operating permit at the public facility and permit the health authority to inspect it at any reasonable time.

#### **Section 36.111 Denial or Suspension of Operating Permit; Appeal.**

- (A) The city secretary may deny an application for an operating permit or suspend an operating permit if:
  - (1) the public facility does not comply with the requirements of this article
  - (2) the health authority determines that the public facility is hazardous to pool users or the public; or
  - (3) the operator does not:
    - (a) pay the permit fee;
    - (b) provide a registered technician;

- (c) provide accurate operational records to the health authority; or
  - (d) permit the health authority to inspect the public facility.
- (B) After determining that the public facility does not comply with this article or that the operating permit should be suspended, the city secretary may:
- (1) close the facility;
  - (2) notify the operator of the closure;
  - (3) place a sign at the facility indicating the closure; and
  - (4) lock the entrance to the facility.
- (C) The operator of a public facility may appeal the health authorities denial or suspension of an operating permit to the City Council.

#### **Division 6: Offenses**

##### **Section 36.112 Offenses.**

A person commits an offense punishable in accordance with Local Government Code §54.001 if the person performs an act prohibited by this article or fails to perform an act required by this article. A fine or penalty for the violation of this ordinance may not exceed \$500. However, if there is a finding by the Court that the regulation being violated governs public health and sanitation the fine may not exceed \$2,000 for each offense. Each instance of a violation of this article is a separate offense. Each day the violation occurs is a separate offense

#### **Division 7. General Provisions**

**Sec. 36.113 Construction:** The terms and provisions of this article shall not be construed in a manner to conflict with *the Texas Local Government Code and the Texas Health & Safety Code*, and if any term or provision of this article shall appear to conflict with any term, provision or condition of these codes, such article term or provision shall be read, interpreted and construed in a manner consistent with and not in conflict with such Chapter, and, if possible, in a manner to give effect to both. The standard and accepted rules of statutory construction shall govern in construing the terms and provisions of this rule.

**Sec. 36.114 Amendment and Repeal:** All ordinances or parts thereof conflicting or inconsistent with the provisions of this article as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this article and any other code or ordinance of the village, the terms and provisions of this article shall govern.

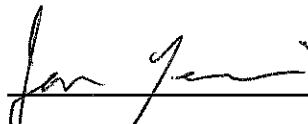
**Sec. 36.115 Severability:** If any provision of this article or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

**Sec. 36.116 Effective Date:** This article shall take effect on 29th day of September 2005.

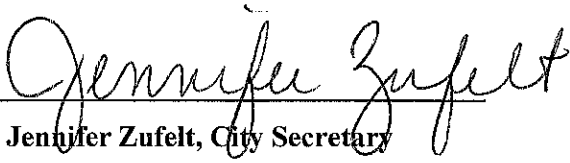
**Sec. 36.117 Open Meetings:** It is hereby officially found and determined that the meeting at which the enacting ordinance of this article is passed was open to the public as required and that the public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, *Chapter 551 of the Texas Government Code*.

**Passed and approved on this 29<sup>th</sup> day of September 2005.**

**Village of Volente**

  
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Jan Yenawine, Mayor

**ATTEST:**

  
Jennifer Zufelt, City Secretary